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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,515	07/02/2003	Kevin T. Stone	5490-000335	3533
27572 7590 05/23/2008 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303				
EXAMINER				
TYSON, MELANIE RUANO				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
05/23/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/612,515

**Applicant(s)**

STONE ET AL.

**Examiner**

Melanie Tyson

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 19, 20, 22-24, 39, 40 and 42-63 is/are pending in the application.
- 4a) Of the above claim(s) 62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 19, 20, 22-24, 39, 40, 42-61, and 63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 February 2008 has been entered. Corrections made have been accepted.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-9, 19, 20, 22-24, 39, 40, and 42-53 have been considered but are moot in view of the new ground(s) of rejection.

### ***Election/Restrictions***

3. Newly submitted claim 63 is directed to non-elected species II (a suture protecting portion on the bone engaging portion). Accordingly, claim 63 is withdrawn from consideration as being directed to a non-elected species.

### ***Claim Objections***

4. Claim 58 is objected to because of the following informalities: claim 58 contains a typographical error. In line 2, replace "defined by an bore" with --defined by a bore--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 63 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 63 recites the limitation "said suture protecting portion" in line 2. Since claim 63 depends from claim 60, which depends from claim 47, there is insufficient antecedent basis for this limitation in the claim. It is noted that if 63 is corrected to depend from claim 62, claim 63 will also be withdrawn from consideration as being directed to non-elected species II.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-9, 19, 20, 22-24, 39, 40, and 42-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Stone et al. (Patent No. 6,139,565). Stone discloses a suture anchor (see entire document) comprising a single unit formed of stainless steel (for example, see column 4, lines 60-62 and 65-67) having a bone engaging section with a bone engaging structure defining a maximum diameter (for example, see threaded portion shown in Figures 12B and 12C), a suture engaging section spaced axially from the bone engaging section and defining a diameter equal to the maximum diameter (for example, see Figure 12C), a first and second enclosed eyelets (for example, see Figure 12A) in a single wall of the suture engaging section that is substantially transverse to the bone engaging axis (top wall; for example, see Figure 12A) formed to allow a

selected portion of a suture to pass through the suture engaging section, and a suture passage interconnecting the first and second eyelets (portions of 18 and 19 form first, second, and third passages) operable to allow a suture to enter and exit the suture engaging section from a single section (top section) such that the selected portion of the suture remains substantially within the maximum diameter and further allows a suture to be passed to an exterior at a point other than the first and second eyelets (for example, see Figure 12B; portion 18 extends through exterior surface forming an "access"). The suture engaging section is capable of being substantially disposed below an exterior surface of a bony structure and the eyelets are capable of being substantially exposed after implantation since they are formed on the top wall.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Thursday 8:30-7 (max flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson /M. T./  
Examiner, Art Unit 3773  
May 12, 2008

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773